IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 636 of 2001
In
SPECIAL CIVIL APPLICATION No. 8790 of 1989

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDRASEN TARACHAND CHAND - Appellant(s)
Versus
GUJARAT AGRICULTURAL UNIVSRSITY & 1 - Respondent(s)

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Appearance :
MR SHALIN N MEHTA for Appellant(s) : 1,
MR DG CHAUHAN for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 25/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

This Appeal preferred under clause 15 of the Letters Patent arises from the judgment and order dated 17th February, 2001 passed by the learned Single Judge in above Special Civil Application No.8790 of 1989.

The appellant, writ petitioner is a teacher in Gujarat Agricultural University (hereinafter referred to as, **"the University"**). He claims that on his promotion as Assistant Professor made on 17th May, 1974 he should have been given the pay-scale of Rs.1200-1900. The said claim has been rejected by the learned Single Judge. Hence, the present Appeal.

The appellant was initially appointed as a Lecturer in Dairy Science College, Anand (hereinafter referred to as, **"the College"**) in the pay-scale of Rs.260-420 on 4th November, 1969. On establishment of the University under the Gujarat Agricultural Universities Act, 1969, the College was merged with

the University with effect from 1st June, 1972. The appellant's service thus came to be absorbed by the University with effect from 1st June, 1972. The pay-scale of Rs.260-420 was later revised to Rs.325-575 with effect from 1st June, 1972. By Notification dated 9th April, 1974 issued by the University, the University accepted the scales of pay prescribed by the Indian Council of Agricultural Research (hereinafter referred to as, **"the Council"**) (i.e. the scales of pay recommended by the University Grants Commission; hereinafter referred to as, **"the UGC"**) for teachers, inter alia, in the agricultural colleges. Under the said Notification the University accepted pay-scales of Rs.400-950 for Assistant Professors and of Rs.300-600 for Instructors.

Feeling aggrieved by the assignment of the pay-scale of Rs.300-600, the appellant and some other teachers preferred Special Civil Application No.348/1977 before this Court under Article 226 of the Constitution of India. In the said petition the writ petitioners claimed that in view of the UGC pay-scales made applicable to the teachers in the

University the said writ petitioners were entitled to a pay-scale of Rs.400-950 with effect from 1st June, 1972. The said petition came up for hearing before the Court on 18th April, 1977. The University appeared before the Court and assured that the teachers would be paid their salary in accordance with the averments made in paragraph 4 of the counter-affidavit. On such an assurance being given, the said writ petitioners withdrew the petition. Pursuant to the said statement the appellant and others were given the pay-scale of Rs.300-600.

Feeling aggrieved by the said pay-scale, the appellant and others preferred Special Civil Application No.962/1977 before this Court under Article 226 of the Constitution of India. In the said writ petition, the writ petitioners raised a contention that the Special Civil Application No.348/1977 was wrongly withdrawn and that the said writ petitioners were entitled to pay-scale of Rs.400-950 with effect from 1st June, 1972. The said writ petition came to be allowed by the learned Single Judge (Coram: S.A.Shah, J.) on 22nd September,

1983. The learned Judge was of the opinion that the Council had adopted and recommended the pay-scales recommended by the UGC. The UGC had recommended only three pay-scales; for Professors, Associate Professors and Assistant Professors in the University. The pay-scale of Rs.300-600 adopted for the Lecturers/Instructors was not the one recommended by the Council. The State Government, therefore, could not have accepted the scale of Rs.300-600 for the Lecturers. It was accordingly directed that the said writ petitioners (including the appellant) were entitled to a scale of Rs.400-950 with effect from 1st June, 1972. The said order of the learned Single Judge was confirmed by the Division Bench in Letters Patent Appeal No.350/1983. In compliance with the aforesaid direction issued by this Court, the appellant was given the pay-scale of Rs.400-950 with effect from 1st June, 1972.

On revision of pay-scales under Government Resolution dated 21st February, 1977 the said pay-scale of Rs.400-950 was revised to Rs.700-1600 with effect from 1st January, 1973. Since then, the

appellant's pay has been revised time and again. He has been given the benefit of senior scale and the selection grade as recommended by the UGC and adopted by the Council and the State Government. In the mean time, the appellant came to be promoted as an Assistant Professor on 17th May, 1974 in the then prevalent scale of Rs.350-850. The said promotion was confirmed on 23rd February, 1978. On the date the appellant was promoted as Assistant Professor, one Dr.A.N.Mehta, then an Assistant Professor came to be promoted as an Associate Professor in then prevailing scale of Rs.1200-1900. The appellant had also preferred Special Civil Application No.2437/1982 before this Court under Article 226 of the Constitution of India against the action of the University in granting higher pay-scale of Rs.1100-1600 to the respondents therein with effect from 1st January, 1980 and of Rs.1200-1900 with effect from 1st January, 1982. The said petition came to be dismissed on 15th April, 1996 (Coram: S.K.Keshote, J.). The learned Judge was pleased to observe that, **“the respondents were given the pay-scale of Rs.350-850 with effect from 1st June, 1972 whereas the petitioner**

has already been granted higher pay-scale by this Court in Special Civil Application No.962/1977. In view of this fact nothing survive in the petition."

Once again, the avarice of the appellant seems to have conquered his good sense. This time he preferred the above Special Civil Application No.8790/1989 under Article 226 of the Constitution of India and claimed that on his promotion as Assistant Professor in the place of aforesaid Dr.Mehta, the appellant should be given the same benefit of weightage of his past service and be paid the pay of Rs.1200-1900 paid to the said Dr.Mehta.

The petition was contested by the University. According to the University the appellant had been given his rightful pay-scale. The order of this Court made on Special Civil Application No.962/1977 was also duly complied with. Any comparison with Dr.Mehta made by the appellant was inapposite. The said Dr.Mehta was far senior to the appellant. The said Dr.Mehta also possessed a higher qualification of

M.Sc., Ph.d. The said Dr.Mehta had joined the service as a Demonstrator on 6th July, 1957 and was promoted as Lecturer in the year 1961. He was further promoted as Assistant Professor on 30th November, 1968 i.e. before the appellant joined the service. On 15th May, 1974 the said Dr.Mehta was promoted as an Associate Professor in the scale of Rs.500-1250 which came to be revised to Rs.1200-1900 with effect from 1st January, 1973.

The learned Single Judge has held that the relief prayed for by the appellant in Special Civil Application No.962/1977 was granted by this Court. At the time the appellant did not raise this question and, in view of the aforesaid order dated 15th April, 1996 made on Special Civil Application No.2437/1982 the appellant was not entitled to the relief prayed for.

Mr.Shalin Mehta has vehemently submitted that the appellant was entitled to the weightage of his past service similarly as Dr.Mehta. The appellant was, therefore, on his promotion as Assistant

Professor, entitled to the pay-scale of Rs.1200-1900 and the consequential reliefs.

Mr.Chauhan has contested the Appeal and has supported the judgment of the learned Single Judge. He has relied upon the judgment of the Hon'ble Supreme Court in the matter of **State of Haryana and others v/s. Charanjit Singh and others** [AIR 2006 SC 161] particularly paragraph 17 thereof.

Facts recorded hereinabove are not in dispute. We see no merits in this Appeal. As recorded hereinabove, the appellant, on his absorption in the service of the University on 1st June, 1972, demanded the pay-scale of Rs.400-950. The said pay-scale was duly given to the appellant. The appellant was also given the benefit of revision of pay-scale, the senior scale and the selection grade from time to time. If at all the appellant had any grievance in respect of his pay in the promotional post of Assistant Professor, it should have been raised at the earliest. The belated claim raised in the year 1989; i.e. some 15 years after his promotion is

clearly an afterthought. The appellant's claim for a higher pay-scale with effect from 19th May, 1974 and the consequential reliefs claimed in the above petition filed in the year 1989 is clearly misconceived, belated and barred by the principle analogous to the principle of constructive *res judicata*.

For the aforesaid reasons, we dismiss the Appeal with cost.

(Ms. R.M.Doshit, J.) **(Harsha Devani, J.)**

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